

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**STANLEY C. KERBY**  
Claimant

VS.

**THE BOEING COMPANY**  
Respondent

AND

**INSURANCE COMPANY OF THE  
STATE OF PENNSYLVANIA**  
Insurance Carrier

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Docket No. 250,409

**ORDER**

Claimant appealed the September 6, 2006, Post Award Medical order entered by Administrative Law Judge Nelsonna Potts Barnes. The Board placed this matter on its summary docket for disposition without oral argument.

**APPEARANCES**

Roger A. Riedmiller of Wichita, Kansas, appeared for claimant. Frederick L. Haag of Wichita, Kansas, appeared for respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The record considered by the Board is listed in the September 6, 2006, order.

**ISSUES**

Claimant injured his left shoulder on October 22, 1998, while working for respondent. The parties settled this claim in September 2000 by an agreed Award. Claimant now requests medical treatment for his cervical spine, which he contends is directly related to the left shoulder injury.

In the September 6, 2006, order, Judge Barnes denied claimant's request for medical treatment. The Judge found that claimant had failed to prove his current need for

medical treatment to his cervical spine was related to his October 1998 accident and resulting left shoulder injury.

Claimant contends Judge Barnes erred. Claimant argues both Dr. Pedro A. Murati and Dr. C. Reiff Brown, who conducted an independent medical exam at the Judge's request, related his neck pain to his left shoulder injury. Accordingly, claimant requests the Board to grant him medical benefits for his cervical spine. In addition, claimant's attorney also requests an additional \$450 in attorney fees for the three hours expended on this appeal.

Conversely, respondent and its insurance carrier contend the September 6, 2006, order should be affirmed. They contend only Dr. Murati, who was claimant's medical expert, related claimant's cervical problems to his October 1998 left shoulder injury.

The issues before the Board on this appeal are:

1. Is claimant's present need for medical treatment to his cervical spine related to his October 1998 left shoulder injury?
2. Is claimant's attorney entitled to an additional \$450 in attorney fees for the time and services rendered on this appeal?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes:

The principal issue upon this appeal is whether claimant's present neck problems are related to his October 1998 work-related accident. There is no question that claimant injured his left shoulder in that accident, nor is there any dispute that the parties entered into an agreed Award for workers compensation benefits for that injury or that in June 2003 claimant underwent left shoulder replacement surgery.

In an Award that was filed with the Division of Workers Compensation on September 22, 2000, the parties stipulated claimant was entitled to receive permanent disability benefits for a 13.5 percent permanent impairment to his left shoulder. The parties also agreed claimant would be entitled to receive additional medical treatment to his left shoulder either upon agreement of the parties or proper application to and approval by the Director of the Division of Workers Compensation. Nonetheless, claimant now requests medical treatment for his neck.

As indicated by the Judge, four doctors testified in this post-award proceeding. Dr. Pedro A. Murati, who specializes in physical medicine and rehabilitation, examined claimant at his attorney's request in January 2004. The doctor diagnosed claimant as having myofascial pain syndrome in both the left shoulder girdle and cervical paraspinals and cervical strain with nerve conduction tests positive for radiculopathy at the fifth and seventh cervical vertebral levels.

Dr. Murati related claimant's myofascial pain syndrome and radiculopathy to the left shoulder injury that claimant sustained in October 1998 while working for respondent.

Q. (Mr. Riedmiller) Doctor, I would now like to ask you a couple of questions about causation with respect to this particular patient. Doctor, do you have an opinion within a reasonable degree of medical probability as to what was causing the claimant's neck complaints when you saw him on or about January 21, 2004?

A. (Dr. Murati) Well, he had [a] combination of problems. He had myofascial pain syndrome at the level of the left shoulder into the neck and he also had radiculopathy.

Q. How, if in any way, did those problems relate to claimant's left shoulder status post hemiarthroplasty?

A. How what?

Q. How, if in any way, did those findings that you just described relate to the left shoulder sequelae of injury, surgery, which I think you described as a left --

A. Hemiarthroplasty.

. . . .

Q. Are they causally related in some way?

A. Well, yeah, myofascial pain syndrome is caused by essentially a painful stimuli applied over a long period of time and, as time goes by, it tends to get worse. So a bad shoulder will make a bad neck and vice versa.

Q. What is myofascial pain syndrome?

A. Myofascial pain syndrome is a clinical syndrome characterized by the presence of trigger points. These are tight bands of muscle tissue that when you press on them, you have certain results. One of them is you can feel them switch *[sic]* and the other one is that they are not only tender at their spot, but they refer tenderness

to other parts of the body. Without the presence of the trigger points, you cannot have myofascial pain syndrome.

. . . .

Q. What, if in any way, did the left shoulder problem and resulting surgery affect the radiculopathy that the claimant was describing and that you diagnosed in this particular case?

A. It would contribute to it to progress.

. . . .

Because when you have pain, you have tightness of the musculature which allows less movement of the neck which makes spasms in the neck become chronic, which, in turn, compress on the nerve roots.<sup>1</sup>

Dr. Murati had previously examined claimant in June 2000 and at that time diagnosed, among other maladies, cervical strain with a loss of range of motion and signs of radiculopathy.

At claimant's attorney's request, Dr. George G. Fluter examined claimant in early August 2004. Among other symptoms, claimant reported pain in the left side of his neck and intermittent pain into *both hands*. Dr. Fluter, who specializes in physical medicine and rehabilitation, diagnosed chronic radiculopathy in claimant's neck at C5 and C7 and possible thoracic outlet syndrome. The doctor, however, did not have an opinion whether claimant's neck problems were related to his October 1998 accident at work and the resulting left shoulder surgery.

Dr. C. Reiff Brown, an orthopedic surgeon, examined claimant in January 2000 at claimant's attorney's request and in April 2002 at the Judge's request. In November 2004, the doctor again examined claimant at the Judge's request to render an opinion regarding the cause of claimant's neck and left arm complaints. The doctor attributed the *muscle* pain in the left side of claimant's neck and his left upper extremity to claimant's left shoulder injury and resulting surgery.

Q. (Mr. Riedmiller) With respect to those complaints, left side of his neck, the claimant's left side of his neck, and his upper arm, do you have an opinion within a reasonable degree of medical probability as to whether or not those symptoms are related to the left shoulder problems the claimant has been treating for for the last five years?

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<sup>1</sup> Murati Depo. at 11-13.

A. (Dr. Brown) Yes.

Q. What is that opinion?

A. I think that pain is a direct result of his shoulder pathology. It is very common for a person who has, say, a rotator cuff tear or an impingement, acromial impingement syndrome, or even a fracture, certainly the necrosis that this man had in his shoulder could produce pain in the shoulder which bleeds over into the muscles in the side of the neck, that is upper trapezius muscle and the cervical paraspinous muscles. It is common that those hurt. It is common for people to think it is something wrong with their neck because when the shoulder gets to hurting bad, it comes over and involves those muscles on the side of the neck. And, likewise, that pain as it gets worse in the shoulder extends downward into the muscles of the upper arm between the elbow and shoulder. So that's common and I attribute it to that.

Q. What, if any, kind of treatment would you recommend that Mr. Kerby have for the complaints of the lateral side of the left side of the neck and for the upper arm?

A. He should be -- if he wants to get it treated, he should be tried on a course of physical therapy that would be modalities and muscle stimulation, possibly some mobilization techniques that the therapists use. And along with that he should be given a course of anti-inflammatory medication such as Feldene, Lodine, Celebrex, some of those that are commonly used now. And I think that the nonnarcotic analgesic pain medication would be a help to him.

Q. Do you have an opinion today within a reasonable degree of medical probability as to whether or not that medical treatment that you have just described would be considered a natural and foreseeable consequence of the shoulder injury and resulting surgeries that Mr. Kerby had including the surgery to repair the shoulder back in June of 2003?

A. Yes, I would think that it would be attributable to his shoulder pathology, that it came from that injury.<sup>2</sup>

But Dr. Brown could not explain or account for the radicular symptoms claimant reported in his left arm. Dr. Brown found no neurological deficits in claimant's left arm. In short, the doctor has no opinion as to the cause of any neurological problems claimant may have in his left arm.<sup>3</sup> Indeed, the doctor was unable to attribute those symptoms to any cause and he found no evidence at the last two examinations of a cervical radicular

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<sup>2</sup> Brown Depo. at 8-10.

<sup>3</sup> *Id.* at 25.

syndrome. In short, Dr. Brown only attributed muscle pain to claimant's work-related injury. Moreover, the doctor questioned whether additional treatment would resolve claimant's symptoms.

Finally, Dr. Chris D. Fevurly, who practices occupational medicine and who examined claimant at the request of respondent and its insurance carrier for purposes of this litigation, examined claimant in August 2005. The doctor concluded claimant has painful shoulder girdle muscles due to elevating his left arm using those muscles. Dr. Fevurly believed claimant had neck pain because it was coming from the shoulder girdle and being referred into claimant's neck.<sup>4</sup> But Dr. Fevurly did not believe claimant had sustained any cervical spine injury. Moreover, the doctor believed any lost range of motion in the cervical spine was probably due to spondylosis, which he did not feel was related to claimant's left shoulder injury.

The Board agrees with Judge Barnes that claimant has failed to prove he needs treatment to his cervical spine as a result of his October 1998 accident or the resulting left shoulder surgery. Nevertheless, the medical evidence establishes that claimant has neck pain and left upper arm pain due to referred pain from the muscles of the shoulder girdle. Accordingly, this Post Award Medical order should not be construed to prohibit claimant from receiving any appropriate physical therapy or medications for that referred muscle pain.

Claimant's request for additional attorney fees should be presented to the Administrative Law Judge.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.<sup>5</sup> Accordingly, the findings and conclusions set forth above reflect the majority's decision and not necessarily any individual member's analysis of the law or facts. And the signatures below confirm this decision is that of the majority.

**WHEREFORE**, the Board modifies the September 6, 2006, Post Award Medical order only to clarify that claimant has neck pain and left upper arm pain due to referred pain from his shoulder girdle. Accordingly, claimant is entitled to receive appropriate medical treatment for that referred pain as part of this claim. If a treating physician is not presently authorized, then respondent and its insurance carrier are hereby ordered to do so.

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<sup>4</sup> Fevurly Depo. at 58.

<sup>5</sup> K.S.A. 2005 Supp. 44-555c(k).

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December, 2006.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant  
Frederick L. Haag, Attorney for Respondent and its Insurance Carrier  
Nelsonna Potts Barnes, Administrative Law Judge